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Attorneys for Defendant:
CARLOS E. KEPKE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS E. KEPKE,

Defendant.

Case No. 3:21-CR-00155-JD

**DECLARATION OF GRANT P. FONDO
IN SUPPORT OF CARLOS KEPKE'S
OPPOSITION TO MOTION *IN LIMINE*
TO EXCLUDE EVIDENCE OF
COMPROMISE NEGOTIATIONS
BETWEEN THE UNITED STATES AND
ROBERT SMITH**

Date: November 21, 2022
Time: 1:30 p.m.
Courtroom: 11, 19th Floor
Judge: Hon. James Donato

DECLARATION OF GRANT P. FONDO

I, Grant P. Fondo, declare as follows:

1. I am a partner with the law firm Goodwin Procter LLP and a member of good standing of the bar of this Court. I represent Defendant Carlos E. Kepke (“Mr. Kepke”) in the above-captioned matter. I submit this Declaration in support of Mr. Kepke’s Opposition to Motion *In Limine* to Exclude Evidence of Compromise Negotiations Between the United States and Robert Smith. Unless stated otherwise, this declaration is based on my personal knowledge, and if called as a witness I could and would testify as follows:

2. Attached hereto as **Exhibit A** is a true and correct copy of a presentation titled “Robert F. Smith Presentation to DOJ Tax” dated November 28, 2016, produced by the government on October 28, 2022.

3. Attached hereto as **Exhibit B** is a true and correct copy of a presentation titled “Robert F. Smith Presentation to the Tax Division” dated January 14, 2019, produced by the government on October 28, 2022.

4. Attached hereto as **Exhibit C** is a true and correct copy of a letter from Mark E. Matthews and Mark Filip to Richard E. Zuckerman dated September 23, 2019, produced by the government on October 28, 2022.

5. Attached hereto as **Exhibit D** is a true and correct copy of a spreadsheet titled “Final Redaction Log,” produced by the government on October 28, 2022, which has been converted to PDF format for the purpose of this filing.

6. Attached hereto as **Exhibit E** is a true and correct copy of an email from Grant P. Fondo to Michael Pitman, Corey Smith, and Boris Bourget dated October 31, 2022.

7. The parties met and conferred on November 3, 2022. The government said that it had asked its agents for notes, and would add any such notes to the log, but would not produce them. The government also said it would not log its own attorney notes. As for the redactions, the government declined to withdraw them.

8. Since November 3, 2022, the government has not provided any further updates about the status of the agent notes.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on November 14, 2022 in Los Altos, California.

3
4 Dated: November 14, 2022

GOODWIN PROCTER LLP

5
6 By: /s/ Grant P. Fondo

GRANT P. FONDO (SBN 181530)

GFondo@goodwinlaw.com

7 **GOODWIN PROCTER LLP**

8 Attorneys for Defendant:
9 CARLOS E. KEPKE

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **November 14, 2022**. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **November 14, 2022** in Los Altos, California.

/s/ Grant P. Fondo

GRANT P. FONDO